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14 Attorneys for Defendants  
 15 LIFELINE SYSTEMS COMPANY and LIFELINE SYSTEMS, INC.

16  
 17 **IN THE UNITED STATES DISTRICT COURT**  
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19  
 20 KENNETH C. RUMP,  
 21  
 Responding Party,  
 22  
 v.  
 23 PHILIPS LIFELINE, an entity; and DOES 1-  
 24 50, inclusive,  
 25  
 Defendants.

Case No: 3:09-CV-03271

**STIPULATION FOR FILING OF  
 FIRST AMENDED COMPLAINT**


26 KENNETH C. RUMP, the plaintiff in this action, and LIFELINE SYSTEMS COMPANY  
 27 and LIFELINE SYSTEMS, INC., the defendants, stipulate and consent, in writing, within the  
 28 meaning of Rule 15(a) of the Federal Rules of Civil Procedure, that plaintiff KENNETH C.  
 29 RUMP may file the First Amended Complaint]in this action that is attached to this Stipulation  
 30


**STIPULATION FOR FILING OF FIRST AMENDED COMPLAINT**  
 RUMP V. PHILIPS LIFELINE, ET AL.  
 CASE NO. 3:09-CV-03271

1 as Exhibit A. ~~The parties further stipulate that the amendment will date and relate back to the~~  
2 ~~date of filing of the original complaint.~~ *ER*

3 The parties agree that the allegations contained in the First Amended Complaint are  
4 controverted by the defendants and all affirmative defenses available to defendants apply. As  
5 such, defendants are not required to file an answer to the First Amended Complaint.  
6

7 Dated: \_\_\_\_\_  
8

9  
10   
11 ERICA ROCUSH, ESQ.  
12 Attorney for Defendants  
13 LIFELINE SYSTEMS COMPANY and  
14 LIFELINE SYSTEMS, INC.

15   
16 RAY T. ROCKWELL, ESQ.  
17 Attorney for Plaintiff  
18 KENNETH RUMP

19 SO ORDERED.

20   
21 UNITED STATES DISTRICT COURT  
22 JUDGE  
23  
24  
25  
26  
27  
28  
29  
30

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7 Attorney for Plaintiff KENNETH C. RUMP

8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 KENNETH C. RUMP,  
12  
13 Plaintiff,

Case No: 3:09-CV-03271

**FIRST AMENDED COMPLAINT**

14  
15 v.

16 LIFELINE SYSTEMS COMPANY; LIFELINE  
17 SYSTEMS, INC.; and, DOES 1-50, inclusive,  
18 Defendants.

19  
20 **JURISDICTIONAL STATEMENT**

21 This Court has jurisdiction over all of the claims and defenses in this matter based on 28  
22 U.S.C. § 1332, as there is complete diversity between the plaintiff and all defendants and the  
23 amount in controversy exceeds \$75,000.00.

24 **ALLEGATIONS**

25 1. Defendant LIFELINE SYSTEMS COMPANY, is, and at all times herein  
26 mentioned was, a Massachusetts corporation.

27 2. Defendant LIFELINE SYSTEMS, INC., is, and at all times herein mentioned was,  
28 a Massachusetts corporation  
29  
30

**FIRST AMENDED COMPLAINT**

RUMP v. PHILIPS LIFELINE, et al.  
Case No. 3:09-CV-03271

Law Offices of Ray T. Rockwell  
2930 Camino Diablo, Suite 300  
Walnut Creek, California 94597

Exhibit A









1 termination of plaintiff's employment and have failed to pay those sums for over 30 days  
2 thereafter. Pursuant to the provisions of Labor Code Section 203, plaintiff is entitled to a  
3 penalty in an amount to be established at trial.

4  
5 **SEVENTH CAUSE OF ACTION**  
**(Accounting Against Employer for Commissions)**

6 33. Plaintiff refers to and incorporates, as though fully set forth herein, Paragraphs 1-  
7 4 and 23-32, inclusive of the Fifth and Sixth Causes of Action.

8 34. Pursuant to the employment agreement referred to in Paragraph 25 hereof,  
9 plaintiff diligently and faithfully rendered his services to Defendants and performed all the  
10 terms and conditions of the contract on his part to be performed.

11 35. Between January 2006 and April 2008, Defendants entered into sales  
12 transactions with various persons and received a profit, a portion of which is due and owing to  
13 plaintiff. Defendants, however, have not accounted for the profits and have not paid plaintiff's  
14 share.  
15

16 36. Plaintiff does not know the precise amount of profit on which to base his claim  
17 for compensation, because such profits can only be determined by an accounting of Defendants'  
18 books and records.  
19

20 **EIGHTH CAUSE OF ACTION**  
21 **(Interference with Economic Expectations)**

22 37. Plaintiff refers to and incorporates, as though fully set forth herein, Paragraphs 1-  
23 4.

24 38. Plaintiff, in the course of his employment with Lifeline Systems the predecessor  
25 entity of Defendants that was acquired subsequently by Defendants, executed a non-solicitation  
26 agreement dated June 30, 2004 ("Non-Solicitation Agreement") for the benefit of Lifeline  
27 Systems. The Non-Solicitation Agreement provided that plaintiff, for a period of one year  
28 immediately following termination of his employment, agreed not to solicit or divert the  
29  
30



1 business or patronage of any of Lifeline Systems' clients, customers, distributors, resellers,  
2 accounts, or prospective clients, customers, distributors, resellers or accounts. The geographic  
3 scope of the Non-Solicitation Agreement extended to anywhere that Lifeline Systems or any of  
4 its subsidiaries is doing business, has done business, or intends to do business. The Non-  
5 Solicitation Agreement further provided that it would inure to the benefit of the successors of  
6 the parties. Defendants acquired Lifeline Systems in early 2007. On April 7, 2008, plaintiff  
7 resigned his employment with Defendants. On or about April 11, 2008, Jeff Moore, plaintiff's  
8 supervisor while employed by Defendants, electronically mailed a correspondence on  
9 Defendants' letterhead to plaintiff in which Mr. Moore stated that "[a]t this point of our  
10 separation, I am compelled to remind you of the Non-Solicitation Agreement that you executed  
11 upon your decision to accept an at-will employee relationship with Lifeline Systems. Philips  
12 Lifeline will hold you accountable to this agreement to its full scope and intent."  
13

14  
15 39. Following termination of plaintiff's employment by Defendants, plaintiff  
16 attempted to obtain employment with various firms in the Senior Living sector, the sector in  
17 which plaintiff was employed by Defendants. Plaintiff informed the firms with which he sought  
18 employment of the existence of the Non-Solicitation Agreement with Defendants. In each  
19 instance, the firms with which plaintiff sought employment refused to hire plaintiff citing the  
20 Non-Solicitation Agreement as the basis for the refusal.  
21

22 40. Based on Mr. Moore's statement to plaintiff regarding enforcement of the Non-  
23 Solicitation Agreement, attributable vicariously to Defendants, it was foreseeable that plaintiff  
24 would suffer economic harm in that firms in the Senior Living sector would refuse to hire  
25 plaintiff.  
26

27 41. In threatening to enforce the Non-Solicitation Agreement, Defendants committed  
28 negligence per se in that the Non-Solicitation Agreement violated California Business and  
29 Professions Code §§ 16600 and 17200.  
30

FIRST AMENDED COMPLAINT



1 the contract.

2 48. Defendants breached the implied covenant of good faith and fair dealing under  
3 the employment agreement by failing to address plaintiff's concerns with the efficacy of the  
4 products he sold on behalf of Defendants as alleged in Paragraph 41.

5 49. Defendants further breached the implied covenant of good faith and fair dealing  
6 by violating and failing to follow its own personnel policies by failing to deal honestly, ethically  
7 and fairly with Defendants' suppliers, customers and employees, and by failing to correct  
8 untrue, misleading, deceptive or fraudulent statements regarding Defendants' products.

9 50. Defendants further breached the implied covenant of good faith and fair dealing  
10 by depriving plaintiff of commissions earned by plaintiff on sales completed before his  
11 termination and due as soon as the products were installed.

12 51. As a proximate result of defendant's breach of the implied covenant of good faith  
13 and fair dealing, plaintiff has suffered, and continues to suffer, losses in earning and other  
14 employment benefits, to his damage in an amount to be established at trial. As a further  
15 proximate result of defendant's breach of the implied covenant of good faith and fair dealing,  
16 plaintiff has incurred reasonable attorney's fees in attempting to secure the benefits owed  
17 him/her under the employment contract.

18  
19  
20  
21  
22 WHEREFORE, plaintiff prays for judgment as follows:

- 23 1. For compensatory damages in an amount to be established at trial.;
- 24 2. For interest on the sum as allowed by law;
- 25 3. For penalties in the amount of \$12,328.77 pursuant to California Labor  
26 Code § 203;
- 27 4. For reasonable attorneys' fees according to proof pursuant to California  
28  
29  
30